Dhruva Alert for GST ADVANCE RULINGS – 10th Edition

1. M/s JSW Energy Limited - Maharashtra (Order of Appellate Authority for Advance Ruling)	
Issues for Consideration	• Whether supply of coal for manufacture of electricity would be treated as 'job work' and GST applicability on such transaction.
Discussion & Ruling	**Discussion:** • JSW Steel Limited ('JSL') supplies coal etc. to its related party i.e. JSW Energy Limited ('JEL' or 'the Applicant'), on free of cost basis for production of electricity. • Further, JEL besides using coal, also uses its own inputs such as air and water to generate power. • JEL would recover 'job work' charges for such conversion activity. • The Original Advance Ruling Authority in its **Ruling**[1] had held that since generation of electricity from the inputs supplied by JSL amounts to manufacture by JEL, it cannot be said to be covered within the ambit of the term 'treatment' or 'process' provided in the definition of job work. Further, the Authority did not provide its ruling on whether GST is applicable on inputs supplied by JSL to JEL, as the Applicant was JEL and not JSL. • Being aggrieved by the above ruling, JEL filed an appeal before the Appellate Authority for Advance Ruling contending that the scope of job work also includes process amounting to manufacture and the same cannot be given a restrictive meaning - Reliance was placed on the definitions under the Act which widens the scope of job work in comparison to earlier definition under Notification No. 214/86 under Excise law, CBIC FAQ, erstwhile judicial precedents, common parlance & dictionary meaning and description of HSN code pertaining to job work. • The Department representative argued that the coal is neither an input as per Standard Input Output Norms, prescribed under the Advance Authorisation scheme, for

[1] GST-ARA, Application No. 05 dated December 7, 2017

	manufacture of steel products nor used for generation of electricity in the in-house coal fired power plant for captive consumption, thus it cannot qualify as 'inputs'/ 'goods' for furtherance of business and hence cannot be supplied on job work basis. Further, the electricity supplied back by JEL to JSL are completely different in character & form than the inputs which have been treated or processed upon. • The Appellate Authority relying on the Notification 214/86 under Central Excise Act and the CBIC Circular dated March 2018, held that the scope of 'job work' is wider in GST and it may or may not include manufacturing. However, with regards to the activities conducted in the present case, the Appellate Authority held that the decisions relied by JEL are not applicable as they pertain to credit eligibility in case of job work transactions. • Further, the Appellate Authority observed that the inputs utilised by JSL for manufacture of its final product i.e. steel is not the same as the inputs which JSL intends to send to JEL for generation of electricity. In fact, under normal circumstances the credit of duties paid on steam coal would typically not be available to JEL (job worker) as the final product i.e. electricity, is currently outside the purview of GST. • With regards to the condition of bringing back the inputs after job work within specified time as stipulated in the law, the Appellate Authority observed that the electricity produced is not supplied directly to the factory of JSL but supplied through the distribution system of a third party i.e. Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL). Also, due to the involvement of MSEDCL, one-to-one co-relation between the goods processed by JEL and the goods received by JSL cannot be established. It was further held that, the condition of involvement of only two persons in the job work is not fulfilled as there are three persons involved in this transaction including MSEDCL. • The Appellate Authority cited the decision of Hon'ble Supreme Court in the case of **Prestige Engineering Ltd**[2], wherein it was held that when job worker contributes his own raw material (not being minor raw materials), then the activity does not amount to job work. Accordingly, the Appellate Authority observed that in the present case major inputs such as water and air were also used for production of electricity, apart from coal, which were not provided by JSL. Thus, the Appellate Authority ruled that the activity between JSL and JEL does not amount to job work. **Ruling:** • The Appellate Authority held that processing of goods would be considered as job work even if it amounts to manufacture. • Based on the above discussions, the Appellate Authority held that the transaction between JSL and JEL would not qualify as job work, as the conditions of Section 143 of CGST Act would not be fulfilled.
Dhruva Comments / Observations	• The definition of job work means any treatment or process undertaken on goods belonging to another registered person. The definition had given rise to ambiguity on whether the job worker can use its own goods or not for undertaking the processing

[2] [1994 (73) E.L.T. 497 (SC)]

	activity. The said ruling clarifies that in order to qualify as a job work, the principal has to supply major inputs and job worker can use only minor inputs such as consumables. The said position is also in line with the Hon'ble Supreme Court's ruling in the case of **Prestige Engineering Ltd** *supra* under the erstwhile Excise regime. While the Government has clarified vide a recent **Circular**[3] dated March 26, 2018, that the job worker can use his own goods for providing his services in addition to that supplied by the principal, it still left room for doubts as to whether the 'own goods' used by job worker could be in the nature of other than minor goods or consumables. • The Appellate Authority has held that the transaction is not job work when the processed goods are supplied back by the job-worker to principal through a third party as the definition contemplates involvement of two persons only. It may be noted that the law only allows job worker to send the finished goods directly to principal's customer or intermediate goods to subsequent job-worker for further processing. Where the goods are not sent to the principal directly apart from the aforesaid scenarios, the transaction to qualify as job work can be questioned. However, these transactions, should be viewed from an overall perspective and taking such restrictive views could defeat the purpose and intent of law. • The Appellate Authority has also made a cursory reference that the coal supplied by JSL to JEL is not an input used in manufacture of its final product i.e. steel. However, it is to be noted that the coal is purchased for use in generation of electricity on job work basis which is eventually used by JSL in its manufacturing activity. However, as per Section 2(59) read with Section 143 of CGST Act, input is defined to mean any goods used or intended to be used in course or furtherance of business. Thus, the Authority have tried to give a very restrictive meaning to the term 'inputs' which does not appear to be the intent of the law.

2. Five Star Shipping – Maharashtra	
Issues for Consideration	• Whether supply of Marine Consultancy Service ('MCS') comprising of consultancy and support service, is in the nature of "composite supply", wherein the principal supply is consultancy service? • Whether the place of supply (POS) for consultancy service as composite supply will be determined in terms of section 13(2)(a) of the IGST Act i.e. "location of service recipient of service"? Alternate questions, if consultancy services and support services are supplied distinctively with separate fees. • Whether consultancy service will qualify as "business consultancy" service and POS for such service will be "location of service recipient of service"? • Whether support service will qualify as "intermediary service", if yes whether the POS for such service will be "location of supplier of service"?

[3] Circular No. 38/12/2018

Discussion & Ruling	**Discussion:** • The Applicant enters into consultancy agreement with the Foreign Ship Owner ('FSO'), for the provision of consultancy and consequential support service, generally referred to as MCS. • The consultancy service comprises of providing continuous market intelligence on commodity shipping and freight market, monitor trade pattern etc and recommends potential charterer to the FSO. The support services provided in conjunction with consultancy services comprises of monitoring voyage execution, calculating lay time and reconciling accounts in settlement of fee between the FSO and charterer. • The fees charged by the Applicant to FSO, is a fixed percentage of gross revenue of charter hire earned by the foreign ship owner. • The Applicant identified and recommended potential charterer/customer to the FSO. The ultimate decision to enter into contract with such identified charterer/customer lies with the FSO. The Applicant is not allowed to conclude or negotiate any contract on behalf of FSO. Further, once the agreement is concluded between the FSO and charterer, the Applicant provides support services to the FSO. The Applicant argued that they are providing support services to FSO and not to the charterers. • The Applicant submitted that the supply of consultancy service and support service should be construed as a supply of composite service as defined under section 2(30) of the CGST Act, since they are naturally bundled and supplied in conjunction with each other. Further, consultancy service should be treated as principal supply as the FSO contacts the applicant for providing consultancy service and subsequently they are involved in provision of support service. • Under the service tax regime, the Applicant classified MCS services (i.e. consultancy and support) as Business Auxiliary Service (BAS) considering it as bundled service in terms of section 66F of the Act. Services provided to FSO were classified as export of service in terms of Rule 6A of the Service Tax Rules, 1994. • In additional submission, the Applicant also raised a question, whether MCS service should be classified as *"other supporting services for water transport nowhere else classified".* • The Advance Ruling authority mentioned that as question in respect of POS is not covered under section 97 of the CGST Act, the queries raised in respect of POS will not be addressed. • The Authority referred to a sample agreement between the Applicant and FSO and observed that the agreement provides that the services can be provided in isolation, thus one of the indicators of a composite supply that *"the different elements are not available separately"* will not be fulfilled. Also, the agreements provide that certain services may also be availed from other Consultants, thus the services are not naturally bundled together. • In respect of the queries relating to classification of consultancy service as "business consultancy", the Authority held that "business consultancy" is classified under the group

	of "Management Consultancy". The authority stated that "Management Consultancy" generally consists of analysing organisational problem and development of plans for improvement. In the instant case, as the consultancy service are not meant for guiding the FSO, but it is more in the nature of providing opportunities to the company, thus it can be classified as support service in transport. • In respect of the query relating to whether support service is "intermediary service", the Authority stated that in the instant case the support service requires monitoring of voyage execution, arranging accounts reconciliation etc which cannot be performed until and unless the Applicant works in co-ordination with the charterers on behalf of the ship owners, thus the said service would be construed as "intermediary services". **Ruling:** • MCS service provided in the agreement is not a composite supply under GST. • Consultancy service provided in the agreement is not a "business consultancy" service. • Support service will qualify as a "intermediary services" as per section 2(13) of the IGST Act.
Dhruva Comments / Observations	• The question of classifying any service whether as a "composite supply" or a "mixed supply" is a vexed one. In absence of any whitepaper discussing in detail, various possibilities and scenarios and laying down the guiding principles, this area is bound to be the most litigious under the GST law. • The Authority has not analysed the concept of "intermediary" in detail, while concluding that support service provided by Applicant is intermediary in nature. There is no substantial change in the concept and scope of intermediary services under GST vis-à-vis service tax regime. In a recent decision in the case of **Sunrise Immigration Consultants Pvt Ltd. Vs CCE & ST**[4] pertaining to service tax, it was discussed and held that the service provided by the assessee which is in nature of promoting the business and where the assessee does not provide the main service of the client, then such services cannot be categorized as intermediary. • Litigation / dispute around the classification of services as 'intermediary services' is bound to continue till specific clarity is brought about through Government clarification and judicial precedents. The term currently, as defined, under the GST law, is very vague in terms of its scope and the Revenue usually inclined to equate all services earlier categorized as BAS, as intermediary services, which is not the intent of the law.

[4] [2018-TIOL-1849-CESTAT-CHD]

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